Tronsen v. Toledo-Lucas County Public Library Doc. 37

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF OHIO
WESTERN DIVISION

ANDERS TRONSEN,	*	Case No. 3:08-CV-148
Plaintiff	*	JUDGE: CARR
	*	
vs.	*	**DEFENDANT'S MEMORANDUM IN OPPOSITION TO PLAINTIFF'S MOTION FOR LEAVE TO FILE AMENDED COMPLAINT**
	*	
TOLEDO-LUCAS COUNTY PUBLIC LIBRARY	*	
Defendant	*	Julia R. Bates Lucas County Prosecuting Attorney By: John A. Borell (0016461) Karlene D. Henderson(0076083) Assistant Prosecuting Attorneys Lucas County Courthouse, Suite 250 Toledo, Ohio 43624 Phone: (419) 213-2001 Fax: (419) 213-2011 E-mail: JABorell@co.lucas.oh.us Counsel for Defendant
	*	

The plaintiff has filed a motion for leave to file an amended complaint. His motion must be denied, since the proposed amendment would be futile.

Leave to amend a complaint must be freely give. *Fed. R. Civ. P.* 15(a). However, the rule conditions

Dockets.Justia.com

its directive by adding "when justice so requires." *Id.* Therefore, a court need not grant leave to amend if the proposed amendment would be futile. *Foman v. Davis*, 371 U.S. 178, 182(1962); *Betty Hiar v. Beverly Hingston*, Case No. 95-1703(6th Cir. Sept. 5, 1996), unreported, 1996 U.S. App. *LEXIS* 25332 *8.

The proposed amended complaint submitted by the plaintiff seeks to assert a due process claim. The alleged due process claim is based solely on the allegation that the defendant did not mail the notice of violation, which included an explanation of the right to appeal, until after the expiration of the seven day time limit to appeal.

However, the defendant's policy states that an appeal may be submitted within seven days of **RECEIPT** of the letter.[1] Thus, the date of mailing is irrelevant to determining the time limit for the administration appeal. Therefore, the proposed amendment would be futile and the plaintiff's motion for leave to file an amended complaint must be denied.

Respectfully submitted

JULIA R. BATES
LUCAS COUNTY PROSECUTING ATTORNEY

By: /s/ John A. Borell
John A. Borell
Karlene D. Henderson
Assistant Prosecuting Attorneys
Counsel for Defendant

[1] The Library's written policies and procedures were attached to the memorandum in opposition to the motion for a temporary restraining order.

CERTIFICATION

A copy of the foregoing Memorandum in Opposition was sent by ordinary U.S. mail to the plaintiff on the 29th day of May, 2008.

/s/ John A. Borell
John A. Borell
Assistant Prosecuting Attorney
Counsel for Defendant